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HAROLD B. WILLEY, Cle

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 478

DR. GEORGE H. BUCK,

Appellant,

vs.

BOARD OF MEDICAL EXAMINERS OF THE STATE OF OREGON

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

The appellees in the above-entitled cause for their joint statement in opposition to appellant's statement as to jurisdiction herein, and in support of appellees' motion to dismiss or affirm, respectfully show the following:

I. Statement of Issues on Appeal

The question sought to be presented in this appeal is appellant's claim that Chapter 265, Oregon Laws of 1951 amends and repeals O. C. L. A. 54-931, and that since there is no savings clause, this action which was commenced under O. C. L. A. 54-931 should have been dismissed; that since this action was not dismissed George H. Buck defendant-appellant is deprived of his profession and property

rights without due process of law and in violation of the Fourteenth Amendment of the Constitution of the United States.

The statute in question, O. C. L. A. 54-931 at the time of commencement of proceedings for the revocation read as follows: "The Board may refuse to grant license to any applicant who desires to practice medicine and surgery in this state or may suspend or revoke such licenses for any of the following reasons:"

(a) "Unprofessional or dishonorable conduct."

(b) "The procuring or aiding or abetting in procuring an abortion unless such is done for the relief of a woman whose health appears in peril because of her pregnant condition after due consultation with another duly licensed medical physician and surgeon."

Oregon law of 1951, Chapter 265, reads as follows:

Following the semicolon after the words "medical physician and surgeon," under (2) "who is not an associate or relative of the physician and surgeon and who agrees that an abortion is necessary. The record of this consultation shall be in writing and shall be maintained in the hospital where the consultation occurred or in the offices of all physicians and surgeons involved for a period of at least three years after the date of such abortion."

II

The Supreme Court of the United States has no jurisdiction over the petition for appeal by the defendant-appellant because:

(1) The Supreme Court of the state of Oregon construed the new act as a mere continuation of the old act;

(2) The question of whether a new statute impliedly repeals an old act is a question of construction;

(3) The United States Supreme Court is bound by the

construction placed on the state statute by that state's highest court.

The Supreme Court of the State of Oregon in the case of *Board of Medical Examiners* v. *Buck*, 56 Adv. Sheet No. 18, page 1029, 1032, 285 P. (2d), 126, stated as follows: "The 1951 act repealed no part of O. C. L. A. 54-931, (b) It reenacted all of that subsection and merely added other requirements. Insofar as the two acts are the same, the new act is regarded as a mere continuation of the earlier one so that only the new provisions are to be considered as having been enacted at the time of the amendment. 50 AM jur, statutes, Section 468, page 482."

The Supreme Court of the United States in the case of *Posadas* v. *National City Bank of New York*, 56 S. Ct. 349, expressly states that the question of whether a new statute impliedly repeals another is a question of statutory construction: "But, in either case the intention of the legislature to repeal must be clear and manifest; otherwise, at least as a general thing, the later act is to be construed as a continuation of, and not a substitute for, the first act, and will continue to speak, so far as the two acts are the same, from the time of the first enactment." Further, on page 353: "and even in the fact of a repealing clause, circumstances may justify the conclusion that a later act repealing provisions of an earlier one is a continuation, rather than an abrogation and reenactment, of the earlier act."

The United States Supreme Court is bound by the construction placed on state statutes by that state's highest court *Guaranty Trust Company of New York* v. *Blodgett*, 53 S. Court 244. The Supreme Court in this case states on page 245 "Since the court below construes the Act—we are bound by the decision of that court as though the meaning as fixed by the court had been expressed in the statute itself in specific words."

III

No substantial federal question is presented by the attempted appeal.

There is no merit in the petition for appeal of the defendant-appellant. The Supreme Court of the United States has definitely stated that whether or not a new statute impliedly repeals another is a question of statutory construction. *Posadas* v. *National City Bank of New York, supra.*

The United States Supreme Court is bound by the construction placed on state statutes by that state's highest court. *Guaranty Trust Company of New York* v. *Blodgett, supra.*

The Supreme Court of the State of Oregon has stated that the new act did not repeal the old law.

It is the established law that the Supreme Court of the United States will not take cognizance of any appeal on the question that has been determined adversely to the contention of such appellant.

WHEREFORE, appellees respectfully move that the within appeal be dismissed or that the judgment and decree of the Supreme Court of the State of Oregon be affirmed.

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